IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

MISCELLANEOUS CRIMINAL APPLICATION NO.380 OF 2007
IN
WRIT PETITION NO.1681 OF 2006

Rajesh Kishor Mehta ..Applicant

V/s.

The State of Maharashtra & ors ..Respondents

Mr.Mahesh Jethmalani a/w Mr.Pranav Badheka, Mr.Nooruddin Dhilla, Mr.Shane Sapeco i/b.Hariani & Co., advocates, for applicant
Mr.S.P.Kadam i/b.M/s.Nankani & Associates, advocate, for intervenor
Ms.S.D.Shinde, APP, for respondent No.1 – The State of Maharashtra

CORAM : SRI.R.M.S.KHANDEPARKAR &
SRI.A.A.SAYED, JJ.

DATE : 19TH DECEMBER, 2007

P.C.

1. Heard learned counsel for applicant, the learned APP for the State and the learned advocate for the original complainant.

2. By the present application, the applicant is seeking stay of the operation of the “Look-Out” Notice issued against him in MECR No.2 of 2007. The contention of the applicant is that it was to the knowledge of the respondent that the applicant is

resident of Belgium and he is required to go to Belgium not only in relation to the administration of his property and the assets but also is required to attend various legal proceedings and therefore he wants to go abroad as early as possible. However, on account of "Look-out" Notice issued against him by the respondent authority, he is unable to leave the country. His further contention is that the notice has been issued solely on the ground that the applicant has not produced certain documents inspite of the fact that for the last two months the applicant had been repeatedly informing the respondent that he is not in possession of any of the documents asked for, and the documents related to the companies which are already in liquidation as well as under administrator, can very well be obtained from the administrator. Besides, even the complainant himself was a Director of the companies along with the applicant and he can also be of help to the investigating agency in that regard. It is the case of the respondent authority that the applicant is not co-operating with the investigating agency in as much as that he has refused to appear in the office of the investigating agency. He has neither attended the office nor produced the documents.

3. Learned counsel appearing for the applicant has drawn our attention to the letters dated 21st September, 2007 addressed by the Senior Inspector of Police, the respondent No.2, the applicant's reply dated 4th October, 2007 to the said letter, the letter dated 23rd November, 2007 by the Senior Inspector of Police, the respondent No.2, and the applicant's reply dated 23rd November, 2007 thereto, which are annexed to the application as “Exh.E” to “Exh.H” respectively and also a letter dated 28th November, 2007 by the said Senior Inspector of Police, his reply dated 4th December, 2007, further a letter dated 8th December, 2007 by the Senior Inspector of Police and the reply of the applicant dated 10th December, 2007 and the affidavit-in-reply filed by Sarjerao Bapu Jagtap, Police Inspector attached to EOW, Unit-III, CB, CID, Mumbai and submitted that the records and the said affidavit clearly disclose that the authorities have been repeatedly asking for the documents regarding four companies, namely M/s.Valuable Resources Limited, M/s.Lunghin Capital Limited, M/s.Wallacery Protits Limited and M/s.Darlingfort Company Limited. All those companies are registered abroad. He further submitted that the investigating agency had insisted for production of such documents under letter dated 21st

September, 2007 addressed to the applicant at Belgium and the same was replied by the applicant Rajesh Mehta on 4th October, 2007 from Antwerpen, wherein it was disclosed to the investigating agency that the applicant was a Director of Valuable Resources Limited from 3rd March, 2004 to 3rd April, 2004 along with the complainant and both of them had resigned on the same date i.e.on 3rd April, 2004, and further that three companies, namely M/s.Lunghin Capital Limited, M/s.Wallacery Protits Limited and M/s.Darlingfort Company Limited, are under liquidation and already a Liquidator has been appointed on 10th November, 2006 pursuant to the application made in that regard by the complainant himself, and all the documents can be sought from the concerned liquidator. He has further drawn our attention to the letter dated 23rd November, 2007 wherein it was informed to the investigating agency that the records and other documents of VRL were never in the possession of the applicant and they are not available with him. Considering the same, it is the contention of the applicant that the notice has been issued only to cause harassment to the applicant and to deny his right to attend his business related proceedings. The learned APP, on the other hand, submitted that inspite of the repeated requests to the

applicant, he failed to co-operate with the investigating agency by failing to produce the documents called for as well as to attend office of the investigating agency and inspite of the various notices issued under Section 160 of the Criminal Procedure Code he had attended office of the investigating authority only on 11th October, 2007 as has been revealed in the affidavit filed by the police inspector today. She has further submitted that if the applicant is allowed to go abroad, he may not be available for investigation and it will cause great prejudice for expeditious completion of the investigation. Mr.S.P.Kadam, the learned advocate appearing for the intervenor/original complainant, drawing our attention to the earlier orders passed in Writ Petition No.1681 of 2006 particularly of dated 7th and 8th September, 2006 has stated that the apprehension of the investigating agency that the applicant will not be available for interrogation if he is allowed to go abroad cannot be said to be without any justification and further that since for the purpose of investigation the presence of the applicant is required in India, the request in the present application may not be entertained.

4. In the course of hearing, the learned APP was

asked to produce statements recorded by the investigating agency subsequent to a letter dated 8th September, 2007, in particular a statement of the complainant recorded on 15th November, 2007. The said statement apparently referred to two persons to be connected with the day to day business activities of the concerned companies in respect of which the documents were called for from the applicant. In that regard, to a specific query, whether any inquiry has been made with those two persons, it was sought to be contended that necessary notices under Section 160 of the Criminal Procedure Code were issued to four persons including the two persons whose names appeared in the said statement. However, when a copy of such notice was produced for our perusal, it only disclosed that it was issued to a person namely Rajesh K. Mehta, who is different from the persons whose names are disclosed in the statement of the complainant dated 15th November, 2007 and the learned APP was unable to produce any material which could suggest any attempt on the part of investigating agency to summon those two persons or to make any investigation in relation to the disclosure made in the statement dated 15th November, 2007. Undoubtedly, such disclosure nowhere refers to the applicant. It is also pertinent to note that the

applicant had been consistently and repeatedly informing investigating agency since 4th October last that he had been a Director of the concerned companies only along with the complainant for a period from 3rd March, 2004 to 3rd April, 2004 and the companies are either under liquidation or under administrator and all the information which was called for from the applicant could be availed from the concerned liquidator, concerned administrator as well as from the complainant. Apart from showing us a statement dated 15th November, 2007 of the complainant, no other materials could be revealed as regards any information being attempted to be obtained from the liquidator or administrator or complainant. To the specific query, as to whether any efforts were made by the investigating agency to approach the liquidator or administrator in that regard, the learned APP on taking instructions from the investigating officer stated that no such efforts have been made in that behalf.

5. Though, the specific averments on oath in the affidavit have been made to the effect that; “I say that the present applicant is one of the accused in MECR NO.2 of 2007 therefore, he was called for recording of the statement and for production of the

relevant documents necessary for the purpose of investigation by issuing summons under Section 91 and/or 160 of Cr.P.C. dated 21.09.2007, 23.11.2007, 28.11.2007 and 08.12.2007 by the Economic Offence Wing, Unit-III, Mumbai. But the present Applicant attended the concerned Investigating Authority only on 11.10.2007. I further submit that a reply dated 04.10.2007 was sent by the present Applicant and it was stated that if in case the Investigating Authority feels his personal presence is necessary then in that event requested to depute some officer to come to Belgium and also stated the records, documents and other details are not available with him", a letter dated 8th December, 2007-by the Senior Inspector of Police of Economic Offence Wing, Unit-III, C.B., C.I.D., Mumbai, addressed to the applicant discloses a clear statement to the effect that "on 11th October, 2007, enquiries were made with you and your statement was recorded. In your statement you had stated that you will produce xerox copies of your passport, VRL Company's documents, statement of bank account of VRL and other documents in this case, within a week. On 16.10.2007 you had attended E.O.W. office and told that you will attend this office by next day and co-operate for investigation but you did not produce any documents

so far". Apparently, the statement in the said letter dated 8th December, 2007 discloses that apart from 11th October, 2007 the applicant had also attended office on 16th October, 2007. A statement in the affidavit that the applicant had attended the concerned office only on 11th October, 2007 is, therefore, not correct. In this regard, the learned APP, on taking instructions from the concerned officer present in the Court, has informed us that the statement in the letter dated 8th December, 2007 refers to the attendance of the applicant in the office of Economic Offence Wing whereas the statement in the affidavit is only in relation to the appearance before investigating agency. It is not disputed that a letter dated 8th December, 2007 was a part of the investigation and was issued by the investigating agency. The investigating agency in that letter has nowhere stated that the applicant had attended the office of Economic Offence Wing which was also the investigating agency in relation to the matter pertaining to the alleged offence. Obviously, therefore, attending the office of the Economic Offence Wing by the applicant could not be presumed to be for any purpose other than in relation to the investigation in the matter in hand. A statement made by S.B.Jagtap in his affidavit in respect of attendence of the

applicant before investigating agency only on 11th October, 2007 cannot be said to be a true state of affairs nor it can be said to be the correct statement. On the contrary, it will have to be considered as apparently incorrect statement, contrary to the record available with the investigating agency in relation to the investigation in the matter in hand. Though, this statement is more than sufficient to issue a Contempt Notice against the respondents, at this stage, we do not want to proceed to take any such action against the concerned officer, lest the investigation may hamper on that count. However, it is necessary to warn the concerned officer that he should be careful in making the statements on oath.

6. As far as grievance of the applicant that without any justification he is sought to be restrained from going abroad to attend to his business and legal proceedings which he is required to attend, is not without any substance as the respondents have not been able to make out any case for denial of his right to travel abroad for his business activities. It is undisputed fact that since October last after coming to India, he has not left the country and has not gone abroad. The applicant has been consistently informing

the investigating agency about the non-availability of the documents called for from him. Even though the document appears to have been prepared to show a notice was sought to be issued to those persons, the investigating agency has not been able to produce any material to show that such notices were in fact served upon those persons or any attempt was made to serve those persons. In these circumstances, we find no justification to reject the application. The application is allowed on certain conditions as the investigation in the matter is at final stage.

7. In the circumstances, we are of the considered opinion that the applicant is justified in contending that there was no justification for issuance of the Look Out Notice or to cause obstruction to travel abroad. Hence, application is allowed. “Look-Out” Notice is quashed and applicant is permitted to travel abroad as a prayer in that regard was made across bars subject to condition that Bank Guarantee or Pay Order of Rs.50,000/- to be deposited with the Registry, High Court, Bombay with an undertaking that he will return back to India in the first fortnight of February, 2008. Order accordingly. Application stands disposed of.

8. Parties to act upon an authenticated copy of this order.

(R.M.S.KHANDEPARKAR, J.)

(A.A.SAYED, J.)